

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MADISON-----X
MICHAEL NELLENBACK,

Index No. _____

Plaintiff,

- against -

VERIFIED COMPLAINT

MADISON COUNTY,

JURY TRIAL DEMANDEDDefendant.
-----X

Plaintiff Michael Nellenback, by his attorneys Hach Rose Schirripa & Cheverie LLP, complaining of the Defendant, Madison County, respectfully alleges, upon information and belief and states as follows:

NATURE OF THE ACTION

1. This is a revival action brought pursuant to the New York Child Victims Act (the “CVA”), CPLR § 214-g. The CVA opened a historic one-year one-time window for victims and survivors of childhood sexual abuse in the State of New York to pursue lapsed claims. Prior to the passage of the CVA, each of Plaintiff’s claims were time barred the day he turned 22 years old.

2. The Plaintiff, when he was a minor, was sexually abused and assaulted by Karl F. Hoch, a social worker who was employed by Defendant Madison County Department of Social Services at the time Hoch committed his heinous acts.

3. As a result of the passage of the CVA, Plaintiff for the first time in his life can pursue restorative justice. Plaintiff brings suit to vindicate his rights.

PARTIES

4. Plaintiff Michael Nellenback (“Plaintiff”) is an individual residing in Onondaga County, New York.

5. Defendant Madison County (“Defendant”) which was and has been a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

6. Defendant Madison County operates a Department of Social Services (“DSS”) which serves over 16,000 county residents on a monthly basis, providing over 40 different programs and services to families and individuals.

7. DSS operates programs under the direction, supervision, and control of Defendant Madison County.

Relevant Non-Parties

8. Karl F. Hoch (“Hoch” or “Plaintiff’s abuser”) is not a party to this action. However, Hoch is an individual who committed the acts described herein which give rise to Plaintiff’s allegations.

9. At all times relevant hereto Hoch was employed as a social worker by Defendant Madison County and was assigned to work in DSS.

JURISDICTION AND VENUE

10. This Court has personal jurisdiction over the claims asserted herein pursuant to C.P.L.R. §§ 301 and 302, in that Defendant transacts business within the State of New York.

11. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

12. Venue for this action is proper in the County of Madison pursuant to C.P.L.R. § 503 in that Defendant maintains a principal place of business in this County.

FACTS COMMON TO ALL CAUSES OF ACTION

Plaintiff Meets Karl Hoch

13. As a child, Plaintiff experienced many behaviors which would now be associated with a diagnosis of Attention Deficit Disorder.

14. In or around the end of summer and beginning of fall of 1992, when Plaintiff was 10 years old, Plaintiff was placed in a program known as Persons In Need of Supervision ("PINS").

15. PINS is a short term voluntary program where a youth may receive access to services. A youth may qualify to participate in PINS if he is exhibited truancy, drug and alcohol use, or incorrigible and ungovernable behaviors.

16. In or around the end of summer and beginning of fall of 1992, Plaintiff was a youth who qualified for PINS due to his many behavior issues.

17. As such, in or around the end of summer and beginning of the fall 1992, Plaintiff was placed in the care of and/or under the supervision of Defendant Madison County's DSS because he was in PINS.

18. At the time Plaintiff was placed in PINS, Defendant Madison County's DSS operated, controlled, and staffed the program.

19. Defendant Madison County's DSS assigned its employee, Hoch, to be Plaintiff's caseworker.

20. Accordingly, as Plaintiff's caseworker, Hoch had frequent and unfettered, unrestricted, and unlimited access to Plaintiff.

21. As Plaintiff's caseworker, Hoch was supposed to monitor Plaintiff's behaviors and progress through his involvement with PINS.

22. As expected, from the onset of Plaintiff's placement in PINS, Hoch would regularly check in on Plaintiff.

Hoch Begins to Groom and Manipulate Plaintiff

23. From the moment Hoch met Plaintiff, he began to “groom” Plaintiff in an attempt to build Plaintiff’s trust.

24. Hoch, with the knowledge, permission, and consent of his employer, Defendant Madison County, regularly picked up Plaintiff from his parents’ residence for “excursions” or “outings.”

25. During these outings, Hoch operated a vehicle issued and owned by Defendant Madison County.

26. During these “excursions” or “outings” Hoch was alone with, and had complete supervision of and control over, Plaintiff.

27. On multiple occasions from July 26, 1993 through approximately August 18, 1995, Hoch, with the knowledge, permission, and consent of his employer, Defendant Madison County, drove Plaintiff from the group residences in which Plaintiff was residing to and from periodic court appearances.

28. On the occasions that Hoch drove Plaintiff from group homes to court appearances, Hoch drove Plaintiff in a vehicle owned and issued by Defendant Madison County.

29. On the occasions that Hoch drove Plaintiff from group homes to court appearances, Hoch was alone with, and had complete supervision and control over, Plaintiff.

30. Hoch would provide Plaintiff with multiple “gifts” as a way to make Plaintiff feel special. For example, Hoch would provide Plaintiff, a minor, cigarettes. It was understood that Plaintiff should not tell anyone he received the cigarettes or both Hoch and Plaintiff would get in trouble.

31. Hoch would often take Plaintiff for fast food like McDonald’s, but would make Plaintiff eat his food in the car.

Hoch Sexually Abuses Plaintiff

32. In or around at the end of summer and/or beginning of fall of 1992, when Plaintiff was ten years old, Hoch drove Plaintiff in a county vehicle to McDonald's and bought food for them both.

33. Hoch parked the vehicle in a nearby park and while he ate his lunch, Hoch let Plaintiff "discover" a bag of pornographic magazines he left in the front seat.

34. While Plaintiff looked at the pornographic magazine, Hoch put his hand on Plaintiff's leg and requested that Plaintiff take out his penis. Hoch then touched Plaintiff's genitals.

35. Hoch told Plaintiff that if he was not compliant, Hoch could refer Plaintiff to the Family Court and remove him from his mother and his home.

36. Hoch "threatened" Plaintiff, by telling him that if anyone found out, Plaintiff would also be in trouble and would be sent to the Division For Youth program ("DFY") which had been described to him by both Hoch and, previously by his attorney, as a very harsh, jail-like place with cells.

37. Until a certain day in or around February 1993, on every subsequent excursion, which occurred approximately every two weeks, but which occurred at least once per month, Hoch repeated this behavior and continued to touch and rub Plaintiff's genitals.

38. In or around February 1993 during one of the official "excursions," Hoch drove Plaintiff to a hotel/motel instead of the McDonald's that was their usual destination.

39. Upon arrival at this hotel/motel, Hoch put on a video, removed his own pants, and asked Plaintiff to remove his clothing. Hoch told Plaintiff to grab Hoch's penis and "rub around" while Hoch masturbated. Out of fear, Plaintiff complied until Hoch ejaculated. Hoch attempted to get Plaintiff to ejaculate too, but Plaintiff was physically unable.

40. From approximately July 26, 1993 and until October 12, 1994, while Plaintiff was residing in Children's Home of Jefferson County, a group residence, Hoch transported Plaintiff from said residence to drive Plaintiff to and from his periodic court appearances. Whenever Hoch transported Plaintiff from Children's Home of Jefferson County, Hoch sexually molested Plaintiff, by touching and rubbing Plaintiff's genitals and having Plaintiff touch and rub Hoch's genitals.

41. On October 12, 1994, Hoch escalated his behavior with respect to his sexual abuse of Plaintiff.

42. On October 12, 1994, when Hoch was transporting Plaintiff to a new group residence, The George Junior Republic, Hoch pulled over on a back road and parked. Hoch then gave cigarettes to Plaintiff and told Plaintiff to remove his pants. Hoch then took off his own clothes and attempted, unsuccessfully, to anally penetrate the Plaintiff. Instead, Hoch masturbated and ejaculated onto Plaintiff's bare buttocks. Hoch asked if Plaintiff was physically able to ejaculate yet, but Plaintiff replied in the negative.

43. Upon information and belief, Hoch sexually abused other minors.

44. As a result of his illegal behavior, Hoch was subsequently arrested and convicted in Madison County of Sexual Abuse in the first degree.

45. Further, Hoch was sentenced and remanded to Marcy Correctional Facility, in Marcy New York. Hoch died while serving his sentence in Marcy Correctional Facility in 2001.

46. As a direct result of the Defendant Madison County's employee Hoch's conduct described herein, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has

incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Defendant Madison County's employee, Hoch's sexual abuse, Plaintiff is unable at this time to full describe all of the details of that abuse and the extent of the harm suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

NEGLIGENT HIRING/SUPERVISION/RETENTION/DIRECTION

47. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs "1" through "46" as if fully set forth herein.

48. Defendant Madison County negligently hired and/or retained its employee Hoch, with knowledge of Hoch's propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

49. Defendant Madison County negligently placed its employee, Hoch, in a position to cause foreseeable harm, which most probably would not have occurred had the employer taken reasonable care in the hiring of employees.

50. Defendant Madison County negligently hired and/or retained its employee, Hoch, negligently placed its employee, Hoch, in a position to cause foreseeable harm, which Plaintiff would not have been subjected to, had Defendant Madison County taken reasonable care in supervising or retaining the employee, Hoch.

51. Defendant Madison County knew or should have known of its employee Hoch's propensity for the conduct that caused Plaintiff's injuries.

52. Defendant Madison County negligently failed to properly train and/or supervise its employee Hoch.

53. That as a result of the foregoing Plaintiff was seriously and permanently injured.

54. That said occurrence and the resulting injuries to Plaintiff were caused solely and wholly by reason of the negligence and carelessness of Defendant Madison County in the ownership, operation, management, maintenance, control, security and supervision of its employees.

55. That as a result of the foregoing, Plaintiff was injured solely and wholly as a result of the negligence, carelessness and recklessness of the Defendant Madison County, and/or its agents, servants, employees, without any negligence on the part of the Plaintiff contributing thereto.

56. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

SECOND CAUSE OF ACTION
VICARIOUS LIABILITY IN RESPONDENT SUPERIOR

57. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs “1” through “46” as if fully set forth herein.

58. Defendant Madison County was and is vicariously liable in *respondeat superior* to Plaintiff for Hoch’s foregoing unlawful conduct in that said acts were reasonably foreseeable by Defendant Madison County and within the general scope of his employment.

59. Defendant Madison County was and is vicariously liable in *respondent superior* to Plaintiff for Hoch’s foregoing unlawful conduct for given prior instances of similar conduct of Hoch and other employees, agents, and/or servants, as well as Defendant Madison County’s failure to respond accordingly, such unlawful conduct was reasonably foreseeable, and within the general scope of Defendant Madison County’s business in that due to prior known instances of similar conduct on Hoch’s part the herein actions of same could have been reasonably foreseen by

Defendant Madison County; and, therefore Defendant assumed a relationship requiring it be responsible for Plaintiff's safety and protection.

60. As a result of the foregoing the Plaintiff has been caused to suffer and sustain severe and potentially permanent personal injuries, including severe injury and potentially permanent injury to her emotional and psychological well-being.

61. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

**THIRD CAUSE OF ACTION
VICARIOUS LIABILITY PREMISED UPON APPARENT AUTHORITY**

62. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs "1" through "46" as if fully set forth herein.

63. Defendant Madison County was and is vicariously liable to the Plaintiff premised upon apparent authority in that Defendant Madison County created an appearance of authority on the part of Hoch upon which, the Plaintiff reasonably relied, thereby enabling Hoch to successfully perpetrate misconduct against the Plaintiff.

64. As a result of the foregoing the Plaintiff has been caused to suffer and sustain severe and potentially permanent personal injuries, including severe injury and potentially permanent injury to her emotional and psychological well-being.

65. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

**FOURTH CAUSE OF ACTION
BREACH OF DUTY IN LOCO PARENTIS**

66. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs "1" through "46" as if fully set forth herein.

67. While Plaintiff was a minor, Plaintiff was entrusted by his/her parents to the control and supervision of Defendant Madison County's employee, Hoch. During the times that Plaintiff was entrusted to Hoch, Hoch was under the supervision and control of Defendant Madison County. The Defendant owes – and owed – a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

68. At all times material hereto, Defendant's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

69. As a direct result of Defendant's breach of duty, Plaintiff has suffered the injuries and damages described herein.

70. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

**FIFTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY**

71. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs "1" through "46" as if fully set forth herein.

72. While Plaintiff was a minor, Plaintiff was entrusted by his/her parents to the control and supervision of Defendant Madison County and its employee, Hoch. During the times that Plaintiff was entrusted to Hoch, Hoch was under the supervision and control of Defendant Madison County.

73. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendant Madison County, this relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the Defendant Madison County and its employee, Hoch. This entrustment of the Plaintiff to the care and supervision Defendant

Madison County's employee, Hoch, while Plaintiff was a minor child, required the Defendant to assume a fiduciary relationship and to act in the best interests of the Plaintiff and protect Plaintiff due to infancy and vulnerability.

74. Pursuant to their fiduciary relationship, Defendant Madison County, was entrusted with the well-being, care, and safety of Plaintiff.

75. Pursuant to their fiduciary relationship, Defendant Madison County assumed a duty to act in the best interests of Plaintiff.

76. Defendant Madison County breached their fiduciary duties to Plaintiff.

77. At all times material hereto, Defendant's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

78. As a direct result of Defendant's breach of fiduciary duty, Plaintiff has suffered the injuries and damages described herein.

79. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

**SIXTH CAUSE OF ACTION
BREACH OF NON-DELEGABLE DUTY**

80. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs "1" through "46" as if fully set forth herein.

81. While Plaintiff was a minor, Plaintiff was entrusted by his/her parents to the control and supervision of Defendant Madison County and its employee, Hoch, for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to recover and access social welfare programs to mitigate the effects of his behavior issues. There existed a non-delegable duty of trust between Plaintiff and Defendants.

82. Plaintiff was a vulnerable child when placed within the care of the Defendant Madison County. As a consequence, Defendant Madison County was in the best position to prevent Hoch's sexual abuse of Plaintiff, to learn of that sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm Plaintiff suffered resulting from Hoch's sexual abuse of Plaintiff. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has had to endure.

83. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendant Madison County breached its non-delegable duty to Plaintiff.

84. At all material times hereto, Hoch was under the supervision, employ, direction and/or control of Defendant Madison County.

85. As a direct result of Defendant's breach of non-delegable duty, Plaintiff has suffered the injuries and damages described herein.

86. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

WHEREFORE, Plaintiff, demands judgment against the Defendant on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be provide at trial, but in any event in an amount that excceds the jurisdictional limits of all lower courts which would otherwise have jurisdiction; extent permitted by law;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- D. Awarding prejudgment interest to the extent permitted by law;

E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: New York, New York
September 3, 2019

Respectfully Submitted,

HACH ROSE SCHIRIPPA & CHEVERIE, LLP



MICHAEL ROSE, ESQ.

HILLARY M. NAPPI, ESQ.

112 Madison Avenue, 10th Floor

New York, New York 10016

212-213-8311

Attorneys for Plaintiff MICHAEL NELLENBACK

ATTORNEY VERIFICATION

HILLARY M. NAPPI, an attorney duly admitted and licensed to practice law in the courts of the State of New York, hereby affirms, pursuant to CPLR ¶ 2106, states under the penalty of perjury, as follows:

I am an associate at Hach Rose Schirripa & Cheverie LLP, attorneys for the Plaintiff herein, and as such, fully familiar with all the facts and circumstances heretofore stated herein by reason of a file maintained in our office located at 112 Madison Avenue, 10th floor, New York, New York 10016; I have read the foregoing Complaint, and the same is true to our own knowledge, except as to the matters therein stated to be alleged upon information and belief and, as to those matters, we believe them to be true; and that this verification is being made by us because the Plaintiff does not reside within New York County wherein our office is located.

Dated: September 3, 2019
New York, New York

Hillary Nappi